IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1721 of 1995
With
CIVIL APPLICATION NO.2491 OF 1999
With
FIRST APPEAL NO.3112 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

A'BAD MUNICIPAL CORPORATION

Versus

AMBICA SCALE MFG. WORKS

Appearance:
MR BP TANNA for Appellant
MR MC BHATT for Respondent

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 07/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals by the Ahmedabad Municipal Corporation under section 411 of the Bombay Provincial Municipal Corporations Act, 1949, challenging the judgement and order of the lower court passed in an appeal under section 406 of the said Act.

2. The principal contention raised by the appellant herein is on a question of law. On behalf of the appellant it is contended that the lower court has misconstrued and misinterpreted the provisions of Rule 15(2) framed under the said Act, and on that basis has come to a conclusion that since the special notice contemplated by the said rule has not been issued, and consequently the said rule has, by such non-compliance, been violated the assessment of ratable value made by the Corporation has been quashed and set aside. This has resulted in what may be called "zero assessment". As a consequence of such a finding the respondent i.e. the person primarily liable to pay municipal tax would be totally free from his obligation to pay any tax whatsoever for the relevant year under consideration. In the premises aforesaid, it was contended that the same could not have been the intention of the Legislature at all.

3. In this context learned counsel for the appellant submitted that the entire question of law dealing with the validity of the special notice required to be issued under Rule 15(2), the particular and peculiar circumstances under which such a notice is required to be issued, and the consequences of non-issuance of such a notice under the circumstances where the same is mandatory, is a question which has been decided by an earlier decision of a Division Bench of this Court in the case of Municipal Corporation of Ahmedabad Vs. Oriental Insurance Co., reported at 1994(2) GLR page 1498.

4. In this context learned counsel for the appellant submitted that the relevant paragraphs dealing with the specific contentions raised by him in the context of the present appeal are paragraphs 57, 60, 61, 62, 63, 65, 66, 67, 68, 70, 71, 72, 73 and 77, which read as under:

"57. The Rules cannot travel beyond the scope of the Act. The liability to pay property tax, according to section 139(1) in case of tenanted

premises, is on the lessor. It is the name of the person, who is primarily liable, which is to be entered in the assessment book, as provided by Rule 9(c). The Act, in contradistinction to the Rules, contemplates realisation of property tax from the tenant under section 140(1) in a case only after bill has been submitted to the lessor and the same remains unpaid. The stage of Rule 15(2) is prior in point of time to the raising of the bill. Under the Act, the liability to pay property tax is fastened on the occupier or the tenant only under the provisions of section 140. The demand for property tax can be made only after the assessment book has been finalised and a bill raised. The assessment book is finalised only when provisions of the Rules, including Rule 15, have been complied with and complaints received and determined under Rule 18. Therefore interpreting Rule 15(2), in the light of the provisions of the Act, the inference can only be that the Rules require only one assessment to be made on the person, who is primarily liable and not on any one else. Notice under Rule 15(2) to an occupier, and not to an owner is, therefore, contemplated only when the occupier does not inform about the name of the owner, thereby attracting the provisions of Rule 12(2), which by a fiction makes him the person liable till the requisite information is obtained or where provisions of section 139(2) are applicable.

** ** ** **

60. It was further submitted that when the property is newly constructed or the rateable value is to be increased, then issuance of a notice under Rule 15(2) is mandatory. Such a notice in writing is to be issued in addition to the public notice given under Rule 13(1). It was also submitted that the use of the word `shall' in Rule 15(2) makes the issuance of such a notice mandatory and if the same is not given, any assessment made would be null and void.

61. The requirement of giving a notice under Rule 15(2) is clearly in consonance with the principles of natural justice. The Rule contemplate that once entries have been entered in the assessment book, then they can be adopted in subsequent years and that a new assessment book must be made once every four years. The

advertisement, contemplated by Rule 13, is only to the effect that the assessment book is ready and that it can be inspected at a place to be notified therein. In case of a property newly constructed or where the rateable value is to be enhanced, such public notice under Rule 13 would give no indication regarding the entries made. The requirement of Rule 15(2) of giving a special notice is only to make the person concerned aware of the fact that the premises are going to be entered in the assessment book for the first time or the rateable value is liable to be changed.

62. What will be the effect, if a special notice, as contemplated by Rule 15(2), is not issued?

Reading of Rule 15(2) shows that giving of special notice is mandatory. The use of the word `shall' in Rule 15(2) clearly indicates that there is an obligation which is cast on the authorities concerned to issue a notice in writing notwithstanding the fact that a general notice may have been published under Rule 13. A notice under Rule 13, published in the newspaper, would not indicate the properties, which are newly added in the assessment book or the changes with regard to the rateable value, which have been made. The public notice under Rule 13 would merely state that the entries in the assessment book have been contemplated and the same is open for inspection. In the case of new properties, where rateable value has been increased, special notice must be given under Rule 15(2). As we have already observed, the requirement of giving a special notice under Rule 15(2) incorporates one of the cardinal principles of natural justice. The owner is required to be put to notice as to what action is contemplated by the Corporation with regard to the fixation of rateable value. If no such notice is given, then the result, which must, normally, follow is that the said assessment will have to be quashed. The Small Causes Court, once it is satisfied that a special notice, as required under Rule 15(2), has not been given, would, normally, set aside the assessment. We are saying `normally' because, one situation may arise, in which case, even if notice under Rule 15(2) has not been given, the Small Causes Court ought not to set aside the assessment. Such a situation will arise where

notice under Rule 15(2) is waived. The principle of waiver, in such cases, is that if certain requirements or conditions are provided by a statute, in the interest of a particular person, then the requirements, or conditions, even if mandatory, may be waived by that person, if no public interest is involved, and in such a case, the act done will be valid even if the requirement or condition has not been performed (see: Dhirendra Nath Gorai & Ors. Vs. Sudhir Chandra Ghosh & Ors.,AIR 1964 SC 1300, at page 1304, Indian Electric Works Ltd., Vs. James Mantosh & Anr, AIR 1971 SC 2213, superintendent of Taxes, Dhubri & Ors. Vs. Onkarmal Nathmal Trust & Ors., AIR 1975 SC 2065).

63. Where, therefore, an assessee chooses to file a complaint against the proposal to fix or increase the rateable value, even without the issuance of a valid special notice under Rule 15(2), the principle of waiver would apply. The requirement of issuing a notice under Rule 15(2) is to give an opportunity, of filing a complaint, to the assessee. If a complaint is filed then the purpose for which the notice was to be issued, is fulfilled. In such a case, even if no notice is issued or the notice, which is issued, suffers from any defect, the principle of waiver would apply and an assessee, in appeal before the Small Causes Court, or even thereafter, cannot be allowed to contend that non-compliance with the provisions of Rule 15(2) must result in the assessment being regarded as a nullity. In those appeals, therefore, where complaints were filed under Rule 16 and the same were disposed of under Rule 18, a contention that no notice under Rule 15(2) was not served cannot be raised.

*** *** ***

65. The provisions of Rule 20 clearly show that the power of the Commissioner to make changes in the entry can be exercised only during the official year itself. Once this official year is over, the Commissioner will have no jurisdiction to make any alteration. In Anant Mills Co. Ltd. Vs. Municipal Corporation, Ahmedabad, 1993(2) GLH 894, it was held by a Division Bench of this Court, after examining the scheme of the Act, that the assessment must be completed before the close of the relevant

official year and once the official year has expired, the Commissioner cannot assess and levy property tax and, therefore, the Court also cannot issue direction to the Commissioner to do something which was not permissible under the Act. The quashing of the assessment would mean that the Commissioner would not be in a position to reassess the levy property taxes and the taxes for those official years would be totally lost to the Corporation. This being the position, the appellate Court cannot and should not set aside the assessment and remand the case for de novo assessment by the Commissioner. Any remand would, obviously, serve no useful purpose.

66. In view of the aforesaid position in law, it was submitted by the learned Counsels for the Corporation that in such cases, the Chief Judge or the Judges of the Small Causes Court themselves should determine the rateable value in accordance with law. The Counsel for the respondents, however, contend that if the assessment is a nullity, because of non-compliance with the provisions of Rule 15(2), or otherwise, then the Small Causes Court has no option but to quash the assessment in toto.

67. The principle underlying the judgement in Anant Mill's case clearly answers the aforesaid question in favour of the Corporation. In that case, it had been contended that the Chief Judge had no jurisdiction to entertain the grounds affecting legality of the assessment. It was also submitted in that case, on behalf of the assessee, that if the Chief Judge came to the conclusion that the method of assessment was illogical or irrelevant and the assessment, therefore, invalid, then it would not be competent for the Chief Judge to determine the rateable value afresh by applying the appropriate method in a correct matter. Elaborating further, it was submitted that all that the Chief Judge would be able to do would be to declare the assessment invalid and leave it to the Commissioner to make a fresh assessment according to the correct method and this would, again, result in the Corporation losing the tax altogether. Similar is the contention raised before us, namely, that the assessment is bad as proper procedure is not followed. Rejecting the submission, the Division Bench, in Anant Mill's

case, at page 922, observed as follows:

"... This contention is also, in our opinion, without substance. It ignores the scheme of the provisions in regard to appeals contained in the Act. We have already pointed out that an appeal may be preferred against the rateable value and in this appeal the assessee would challenge the determination of the rateable value made by the Commissioner. He may challenge it on any ground available to him and such ground may well relate to the method of valuation adopted for the purpose of determining the rateable value. It is apparent from the provision in section 409 sub-se. (1) and particularly the words `before evidence as to value has been adduced' that the appeal against rateable value is in the nature of an original proceeding where evidence as to value may be led by both parties. The Chief Judge may on the application of a party to the appeal appoint a competent person to make the valuation and such person may be called as a witness and if he is so called, he may be cross-examined by the other side. The evidence as to value which may be adduced before the Chief Judge in the appeal may be based on any method which is regarded by the party or his witness as appropriate: It cannot be restricted to the method of valuation adopted by the Commissioner. So also, when a competent person is directed to make a valuation, he may value it according to the method which he regards as proper; there is no requirement in the statute that his valuation must be based on the method adopted by the Commissioner. The entire question as to rateable value would be open before the Chief Judge and as contemplated under section 411 clause (a), it would be fore the Chief Judge to fix the rateable value and the decision of the Chief Judge fixing the rateable value would be final, subject to appeal to the High Court and the Commissioner would be bound to give effect to such decision as provided in section 413. The whole scheme of the provisions clearly contemplates that in the appeal against the rateable value, the Chief Judge would have to fix the rateable value after considering the evidence as to value which may be adduced before him and it is implicit in this process that he would also have to decide which method of valuation should be adopted. If, therefore, the Chief Judge takes the view that the contractor's test method is

inappropriate or inapplicable, he can decide which other method should be adopted and fix the rateable value by applying such method on the basis of the evidence before him ..."

It was contended by Shri Modi that such a course would be clearly contrary to the judgement of the Supreme Court in the case of Martin Burn Limited V. Calcutta Municipal Corporation, AIR 1966 SC 592 and that if the order of assessment is not valid, because of non-compliance with Rule 15(2) or any other Rule, then the Court would have no jurisdiction to undertake the exercise of fixing the rateable value itself. Similar contention was also raised in Anant Mill's case. The Court examined the relevant provisions of the Calcutta Municipal Act, 1923, and compared the same with the provisions of the Bombay Provincial Municipal Corporations Act, and then observed as follows:

"... This decision given on the basis of a scheme of taxation contained in the Calcutta Act can hardly be of any relevance when we are considering a question arising under a totally different scheme of taxation contained in the Corporations Act. The power of the Court of Small Causes under the Calcutta Act was to cancel the assessment or to revise or alter the valuation and the Supreme Court held that since the method on the basis of which the valuation was made by the Corporation was illegal, the Court of Small Causes could not do anything except cancel the assessment: it would not make an independent valuation itself by adopting the correct method, for that would not be revision or alteration of the valuation. But here, under the Corporations Act the power of the Chief Judge in appeal against rateable value is not restricted merely to revision or alteration of the valuation. On the contrary, it is a wide power conferred in general terms without any words of limitation. It says that an appeal against the rateable value shall be heard and determined by the Chief Judge. The Chief Judge is empowered to fix the rateable value after considering the evidence as to value adduced before him and the Commissioner is enjoined to give effect to the decision of the Chief Judge. The principles of the decision in Martin Bura's case can, therefore, have no application under the

Corporation Act.

20. The result of this discussion is that if we quash and set aside the assessment made by the Deputy Municipal Commissioner on any of these grounds urged on behalf of the petitioners, the tax for the official years 1967-68 and 1968-69 would be lost to the Corporation whereas no such drastic consequences would ensue if these grounds are left to be decided by the Chief Judge in the appeals preferred by the petitioners. The Chief Judge can entertain these grounds and if he is of the view that the Contractor's method adopted by the Deputy Municipal Commissioner is not proper or relevant to the determination of the annual rental value, he can determine the annual rental value of the premises by applying the appropriate method and the tax can be levied on the petitioners on the basis of such rateable value. The latter alternative would do fully justice to the petitioners without causing grave and undue hardship which would inevitably result to the Corporation if the former alternative were adopted. We, therefore, refuse to entertain these grounds in the exercise of our jurisdiction under Article 226 of the Constitution. They can be decided by the Chief Judge in the appeals preferred by the petitioners..."

We are in respectful agreement with the aforesaid observations in Anant Mill's case. Following the said ratio, it would mean that even if the assessment is held to be not in accordance with law, whether because of the wrong method followed with regard to determining the rateable value or because of any irregularity or illegality in procedure or because of violation of the principles of natural justice or because notice under Rule 15(2) had not been issued, then the Small Causes Court would itself have the jurisdiction to examine evidence and determine the correct rateable value. It would be wholly in appropriate for the Small Causes Court to merely quash the assessment, which would have the effect that for the official years in question, the entire tax would be lost to the Corporation. In effect, the ratio decidendi of the decision in Anant Mills' case is that the Small Causes Court exercises the same power and will have the same jurisdiction, which is exercised by the Commissioner for the purposes of determining what

would be the correct rateable value.

68. Learned Counsel for the Corporation have rightly contended that the powers of the Small Causes Court are analogous to the powers of the Tribunal under the Industrial Disputes Act. It was held in Cooper Engineering Ltd.V. P.P. Mundhe, AIR 1975 SC 1900 that if no domestic enquiry had been held by the employer before taking action against the employee, then the Labour Court itself could examine the evidence and come to the conclusion whether the action against the workman, which had been taken was proper or not. Similarly, if principles of natural justice have not been followed and/or notice under Rule 15(2) had not been issued, the Small Causes Court would have the power to determine the rateable value in accordance with law.

*** *** ***

70. It was vehemently contended that the special notice, which is issued must mention material particulars, like method of assessment, carpet area, letting rate, as also the reasons for fixing the gross rateable value at a particular figure so that the concerned assessee can effectively and specifically file his objection and meet with the case of the Tax Department and produce relevant and matching evidence in support of his contentions. Relying upon the decisions reported in the cases of Chalisgaon Borough Municipality V. Multanchand Fulchand Sancheti, AIR 1956 Bombay 675,R.R. Dalavai V. Government of Tamil Nadu, 1978 Madras L.J. 93, Shri Mohan Singh V. Municipal Corporation of Delhi, 1980 MCC 196 (Delhi), Corporation of Trivandrum V. Bhaskaran Nair, 1986(1) MCC 338 (Kerala), Gurdial Singh V. Deputy Commissioner, Simla & Ors., 1974 MCC 610 (Delhi), J.C. Mills Ltd., Gwalior V. Municipal Corporation, Gwalior, 1986(1) MCC 402 (M.P) and Gade Narayan Murty V. Berhampur Municipality, AIR 1981 Orissa 29, it was submitted that in the absence of such particulars, the special notice would be vague and liable to be quashed.

71. What are the requirements of a notice which are stipulated in Rule 15(2)? Notice under section 15(2) is issued after entry in the

assessment book has been made. Sub-rule (2) of Rule 15 requires that the special written notice to the owner or the occupier shall specify the nature of such entry. In other words, the special notice must inform the owner about the entries mentioned in Rule 9, clauses (a), (b), (c) and (d), because the said Rule 15 has to be read with Rules 9 and 13. When a statute specifies as to what should be the contents of a notice, and that is so specified in Rule 15(2), the general principles enunciated by the aforesaid decisions and of other High Courts would not be applicable. For the purposes of giving an opportunity to an owner or an occupier to file a complaint, all that he has to be informed is what the Commissioner has entered in the assessment book. One of the items, which is entered, is the rateable value. The Commissioner is under no obligation to inform as to how the rateable value, which is entered in the assessment book, has been arrived at. It is for the owner to complain if he finds the rateable value to be high. The principles for fixation of rateable value are well-known. Ordinarily, a rateable value will be arrived at after particulars had been given by the owners or occupiers under Rule 8 of the said Rules. On the receipt of the notice, it will be for the complainant to lead evidence and prove as to what should be the correct rateable value. A hearing is contemplated by Rule 18 and if the assessee requires any clarification with regard to the entry made in the assessment book, we see no reason as to why this clarification would not ordinarily be given. Be that as it may, Rule 15(2) does not require the giving of any particulars in addition to what is stated therein. The aforesaid decisions of various Courts, therefore, can be of no assistance to the respondents.

72 It was further submitted that any judgement delivered by the Judge in respect of a particular official year, even though such judgement may be delivered after two years, becomes effective and operative retrospectively and would relate back to the commencement of the official years, for which the appeal is decided by the Judge. An example which was given was that if the appeal for 1981-82 was decided on 31st October, 1984, and the rateable value fixed

by the Commissioner at Rs.5000/- was reduced to Rs.1500/-, then the judgement would have to be given effect to for the year commencing from 1.4.1981 and for all subsequent years notwithstanding that entries are made by the Commissioner, in the meantime, for the assessment years 1982-83, and 1983-84. It was contended that, by virtue of section 413(2), the original entry of Rs.5000/- shall be deemed to have been made at Rs.1500/- on account of the effect of the judgement delivered by the Judge for the year 1981-82 and operation of law for the assessment years 1982-83 and 1983-84 the assessment must be regarded as having been reduced to Rs.1500/- and then in respect of those years or future years if the rateable value is to be increased to the figure of Rs.5000/-, a special written notice, as contemplated by Rule 15(2), has to be given.

73. There can be no doubt that according to Rule 21, the entries of the earlier year can be adopted for the subsequent years. Furthermore, every rateable value which is fixed, against which appeal is not filed or every appellate order, which becomes final, has to be given effect to. We are, however, unable to agree with the contention of the learned Counsel that, in the example given above by him, for the assessment year 1982-83 and 1982-83 and onwards, a notice under Rule 15(2) has to be issued, because for the year 1981-82, the appellate Court had reduced the rateable value to Rs.1500/- after entries for 1982-83 and 1983-84 have been adopted. In the very example, which is given, it is contemplated that the entry for 1981-82 was finalised after the issuance of a valid notice under Rule 15(2). As long as that entry of Rs.5000/- for the year 1981-82 remains, the same could be adopted by the Commissioner in the subsequent years 1982-83 and 1983-84. If after such adoption for the year 1982-83 and 1983-84, the appellate Court, in respect of the assessment year 1981-82 allows the appeal and reduces the rateable value, the decision in the said appeal can only be regarded as being given for the assessment year 1981-82. In Taxation, each year is to be regarded as distinct and separate. The Act does not postulate that the appellate decision for one year will, ipso facto, be regarded as a decision for the other years as well. As long as appeals have been filed before

the Small Causes Court, or to the High Court, the assessment cannot be regarded as having become final.

*** *** ***

77. It was vehemently contended that under Rule 15(2), notice is contemplated to be given to the occupier as well and, therefore, he can also file an appeal. As we have already noticed, the notice under Rule 15(2) to an occupier will necessarily be because of the provisions of Rule 12(2). There may also be another category of tenants, who would be entitled to file complaints and receive notices under Rule 15(2). Those tenants would be the ones mentioned in section 139(2). The said provision provides that if any land has been let for any term exceeding one year to a tenant and such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be primarily leviable on the said tenant or on any person deriving title through him. Therefore, when in Rule 15(2), reference is made to the owner or the occupier, it contemplates not only an occupier, who becomes liable by virtue of Rule 15(2), but it will also take in its ambit a tenant of land who becomes a person primarily liable to pay tax on the building erected on tenanted land. Because such a tenant is a person primarily liable to pay tax, therefore, he will have a right to file an appeal."

4.1 The aforesaid decision of the Division Bench was challenged in the Supreme Court, where the said decision was confirmed (except on two minor aspects which do not arise in the present appeals), by the Supreme Court decision reported at 36(2) GLR 1189 (AGM, Central Bank Vs. Ahmedabad Municipal Corporation).

5. We have carefully perused the aforesaid decisions in the context of the contentions raised by the learned counsel for the appellant and we find that the law as laid down in the aforesaid decision upholds the contentions raised before us.

6. Consequently we find that the lower court while allowing the appeals under section 406 of the Act and quashing the rateable value fixed by the appellant Corporation in respect of the premises in question, was not justified in doing so in view of the correct

interpretation of Rule 15(2) as laid down in the aforesaid decision. Consequently the lower court was also not justified in directing refund of tax if paid by the assessee and collected by the Corporation, in view of the correct ratio laid down in the aforesaid decision.

7. We further find that the assessment being reduced to zero and consequently the assessee being absolved of all liability to pay any tax whatsoever for the relevant year, is also not justified.

8. We, therefore, find that the impugned orders passed by the Small Causes Court in appeal under section 406 of the act, which is the subject matter of challenge in the present appeals, cannot be said to have been passed in accordance with law. It was the duty of the Small Causes Court to consider the relevant materials available on record and to ascertain the correct rateable value for the purpose of assessment of tax. The Small Causes Court was under the duty and an obligation to undertake the exercise of determination of the correct rateable value in accordance with law as laid down in the aforesaid decision and on the basis of the evidentiary material placed before it.

9. Consequently the orders challenged in the present appeals cannot be sustained in the eye of law and the same are hereby quashed and set aside. The matters are remanded back to the concerned Small Causes Court for the purpose of a fresh decision on merits, and on the facts established by the evidentiary material on record and in the light of the correct principles laid down by the aforesaid decision. This exercise shall be undertaken by the Small Causes Court after notice to the concerned parties and giving the parties an appropriate hearing to be followed by an appropriate decision by a speaking order in accordance with law.

10. In the premises aforesaid, these appeals are allowed to the aforesaid extent with the directions hereinabove. On the facts and circumstances of the case there shall be no order as to costs.

11. Since the appeal is disposed of,Civil Application No.2491/95 for stay does not survive and is accordingly disposed of.

******

ar